IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM 1938.

*No. 368.*

RAY L. CHESEBRO,

*Appellant,*

*vs.*

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES; BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, as the Board of Supervisors of the Los Angeles County Flood Control District; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP and GORDON L. McDONOUGH, as Members of and constituting the Board of Supervisors of the County of Los Angeles, and *ex officio* the Board of Supervisors of the Los Angeles County Flood Control District,

*Appellees.*

## APPELLEES' BRIEF.

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*Appellees.*

## APPELLEES' BRIEF.

### Opening Statement.

A motion to dismiss the appeal or to affirm the judgment of the California Supreme Court has heretofore been filed in accordance with Rule 12, paragraph 3, of the Rules of this Honorable Court. On October 17, 1938,

the Court granted the motion to dismiss the appeal as to the City of Los Angeles for want of a substantial federal question, basing its action upon *Pawhuska v. Pawhuska Oil and Gas Company*, 250 U. S. 394; *Trenton v. New Jersey*, 262 U. S. 182; *Williams v. Mayor*, 289 U. S. 36, 40; *South Bend v. DeHaven*, 302 U. S. 644. As to the appellant Chesebro, the order heretofore mentioned provided that "further consideration of the question of the jurisdiction of this Court and of the motion to dismiss or affirm is postponed to the merits". Appellees therefore now urge consideration of their motion to dismiss or to affirm as to the appellant Chesebro. In addition to the statement of grounds in support of said motion heretofore filed, appellees will in this brief present further argument on that motion. For the convenience of the Court, by stipulation of counsel, a map is attached to this brief, showing the boundaries of the Flood Control District and the drainage districts in question.

## A. Question Presented.

Appellant has stated that the question presented is

> "whether appellant has been deprived of his property without due process of law, * * * by the action of a local administrative board in transferring to a special assessment district, * * * in which appellant is a property owner, the works, together with the debts, obligations and cost of maintenance, of certain other special assessment districts (drainage districts), under the purported authority of the statute which does not provide for notice to, and an

opportunity for, property owners of the district under which the debts and obligations are transferred to be heard on the question of whether the transfer will be of special benefit to the lands of such district." (App. Br. p. 3.)

Appellees do not believe that statement correctly reflects the question presented. The question involved in this appeal is: Can the Supreme Court review the construction of a state Supreme Court of a state statute upon the mere assertion that such state court erred in holding that the state statute did not deprive a property owner of his property without due process of law? In other words, this appeal calls upon the Supreme Court to pass upon the construction of a statute, rather than its validity.

## B. Deficiencies in the Record.

Appellant has stated (App. Br. p. 4) that Los Angeles County has an area of approximately four thousand square miles and that in 1915 the legislature created in a portion of that area the Los Angeles County Flood Control District. It is stated (App. Br. p. 5) that a special election was held in said district, at which the issuance of bonds was approved. This action originated in the Supreme Court of California by a petition for a writ of mandate which the California Supreme Court, by its decision, refused to issue. The respondents in the original action, appellees here, appeared by general demurrer and the effect of the decision of the California Supreme Court was to hold that the petition did not state

facts sufficient to constitute a cause action. There was no allegation in the original petition, nor is there anything in the record before this Honorable Court, relating to the size of Los Angeles County nor to the formation of the Los Angeles County Flood Control District, nor is there any allegation in the original petition or in the petition for hearing in this Court, that the action of the legislature in adopting the statute here questioned acted arbitrarily, unreasonably or otherwise in the abuse of its legislative power. Since there was no proof in the state court, the original petition had to stand upon the allegations thereof, and the validity of the petition in this Court likewise depends upon the errors alleged to have been committed by the California Supreme Court. No deficiency of the statute in question is pointed out in the petition for this Honorable Court to take jurisdiction. The specification of assignment of errors [R. 17] each states an error of construction by the California Supreme Court.

## ARGUMENT.

Appellees rely upon the following points in support of their motion to dismiss or to affirm and in answer to appellant's argument on the merits.

### POINT I.

### The Record in This Case Wholly Fails to Make a Case Within the Jurisdiction of This Court.

This point is based upon two grounds, namely:

FIRST. Without either alleging, proving, arguing or even claiming that the legislature of the State of California, in exercising its power to enact the statute complained of, acted in a manner that was either arbitrary or unwarranted or constituted a flagrant abuse of that power, appellant seeks to have this Court declare that such statute deprives him of property without due process of law, in contravention of Section 1, Article XIV, of the Amendments to the Constitution of the United States; and

SECOND. The sole question presented by this record is: Did the Supreme Court of the State of California err in its construction of the statute involved?

#### FIRST.

On page 16 of the transcript of record, under the head of "Summary Statement of Case", appellant states:

> "The validity of a statute of the State of California, to-wit, Statutes of 1937, page 1763, adding Section 13½ to the Los Angeles County Flood Control District Act, Statutes of 1915, page 1502, is

drawn into the question upon the ground that said statute deprives appellants and each of them of their property without due process of law and denies to each of them the equal protection of the laws, in violation of the provisions of Article V and Article XIV of the Amendments to the Constitution of the United States."

Following the above quotation appellant sets forth the grounds of the alleged denial of rights, but nowhere therein is it stated or alleged that the legislature of the state, in exercising its power to enact the statute, acted in a manner that was either arbitrary or unwarranted or that constituted a flagrant or other abuse of its power.

In appellant's brief the claim that the statute complained of violated the provisions of Article V of the Amendments to the Constitution of the United States is not mentioned, and therefore will be treated herein as abandoned.

The question of whether a state statute contravenes Article XIV of the Amendments to the Constitution of the United States has been many times before this Court and, because of this, the basis of the jurisdiction of this Court has been repeatedly stated in a long line of uniform decisions.

On this subject this Court, in the case of *Branson v. Bush*, 251 U. S. 182, 64 L. Ed. 215 (1919), at pages 190 and 220, respectively, said:

"The subject was carefully re-examined and the law restated in cases so recent as Phillip Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230, 36 Sup. Ct. Rep. 66, and Houck v. Little River Drainage Dist., 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, with the result that the rule as we have stated it

was approved, with the qualification, which was before implied, that the legislative determination can be assailed under the Fourteenth Amendment only where the legislative action is 'arbitrary, wholly unwarranted,' 'a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property'. And see Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69, 63 L. Ed. 479, 39 Sup. Ct. Rep. 200; Hancock v. Muskogee, 250 U. S. 454, 457, 63 L. Ed. 1081, 1083, 39 Sup. Ct. Rep. 528; Embree v. Kansas City & L. B. Road Dist., 240 U. S. 242, 250, 60 L. Ed. 624, 628, 36 Sup. Ct. Rep. 317.

"The decisions relied upon by the company (Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187; Myles Salt Co. v. Iberia & St. M. Drainage Dist., 239 U. S. 478, 60 L. Ed. 392, L. R. A. 1918E 190, 36 Sup. Ct. Rep. 204; Gast Realty & Invest Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 Sup. Ct. Rep. 254) are not in conflict with the rule, but plainly fall within, and are illustrations of, the qualification of it."

NOTE: The cases mentioned in the last paragraph above are all cited and relied upon by appellant here.

In *American Land Co. v. Zeiss*, 219 U. S. 47, 55 L. Ed. 82, 96, this Court said:

"It is to be borne in mind that it has been settled (Griffith v. Connecticut, 218 U. S. 563, 54 L. Ed. 1151, 31 Sup. Ct. Rep. 132, and cases cited) that the Fourteenth Amendment does not operate to deprive the states of their lawful power and of the right, in the exercise of such power, to resort to reasonable methods inherently belonging to the power exerted. On the contrary, the provisions of the due process clause only restrain those *arbitrary and unreasonable*

*assertions of power* which are not really within the lawful state power, since they are so unreasonable and unjust as to impair or destroy fundamental rights.

"To argue that the provisions of a statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is, in effect, to deny the power of the state to deal with the subject. *The criterion is* not the possibility of conceivable injury, but *the just and reasonable character of the requirements,* having reference to the subject with which the state deals."

In *Mo. Pac. R. Co. v. Hughes,* 115 U. S. 512, 29 L. Ed. 463, 465, this Court said:

"As the case comes from a state court, our jurisdiction is limited to the objection that the statute violates the first section of the Fourteenth Amendment of the Constitution of the United States, and that it deprives the defendant of property without due process of law."

In discussing the compass of the words "due process of law" the Court said:

"They are intended, in addition to other guaranties of private rights, to give increased security against the *arbitrary deprivation* of life or liberty and the *arbitrary spoliation* of property.

"If the laws enacted by a state be within the legitimate sphere of legislative power and their enforcement be attended with the observance of other general rules which our system of jurisprudence prescribes for security of private rights, the harshness,

injustice and oppressive character of such laws will not invalidate them as affecting life, liberty or property without due process of law. * * * It is hardly necessary to say that the hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity; and that the remedy for evils of that character is to be sought from the state legislature." (Citing cases.) (Italics ours.)

In *Mountain Timber Co. v. Washington*, 243 U. S. 219, 61 L. Ed. 685, 696, this Court said:

"Whether this legislation be regarded as a mere exercise of power of legislation, or a combination of regulation and tax action, the *crucial inquiry* under the Fourteenth Amendment is whether it *clearly appears* to be *not a fair and reasonable exertion* of governmental power, but so extravagant or arbitrary as to constitute abuse of power. All reasonable presumptions are in favor of its validity, and the burden of proof and argument is upon those who seek to overthrow it. Erie R. Co. v. Williams, 233 U. S. 685, 58 L. Ed. 1155, 1160, 51 L. R. A. (N. S.) 1097, 34 Sup. Ct. Rep. 761.

"In Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 924, 5 Sup. Ct. Rep. 357, the Court, by Mr. Justice Field, said: 'Neither the (Fourteenth) Amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the *power of the state*, sometimes termed the police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and *to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.* From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such

as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." (Italics ours.)

In *Metropolitan Theatre Co. v. Chicago*, 228 U. S. 61, 57 L. Ed. 730, this Court said:

"Mere errors of government are not subject to our judicial review. *It is only its palpably arbitrary exercises* which can be declared void under the Fourteenth Amendment." (Italics ours.)

To the same effect see:

*Alexander Theatre Ticket Office v. United States*, 23 Fed. (2d) 44, 47, and

*Quong Wing v. Kirkendall*, 223 U. S. 59, 56 L. Ed. 350.

In *Wagner v. Leser*, 239 U. S. 207, 60 L. Ed. 230, this Court made a detailed review of its decisions on the subject, which it summarized thus:

> "Taking the decisions in this Court together, we think that it results that the legislature of a state may determine the amount to be assessed for a given improvement, and designate the lands and property benefited thereby, upon which the assessment is to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of the assessment or the extent of the benefit to be conferred.
>
> "We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of courts of equity to protect the constitutional rights of landowners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise.
>
> "But in the present case there is neither allegation nor proof of such disproportion between the assessment made and the benefits conferred as to suggest that the small tax levied upon this property would amount to an arbitrary exercise of the legislative power upon the subject."

The parallel between the showing made in the *Wagner* case, *supra*, and that in the case at bar is unusually striking.

In *Miller & Lux v. Sacramento & San Joaquin Drainage Dist.*, 256 U. S. 129, 65 L. Ed. 859, 41 Sup. Ct. Rep. 404, this Court said:

> "Since Houck v. Little River Drainage Dist. (1915), 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, the doctrine has been definitely settled that *in the absence of flagrant abuse or purely arbitrary action,* a state may establish drainage districts and tax lands therein for lawful improvements, and none of such lands may escape liability solely because they will not receive direct benefits.
>
> "The allegations of the original complaint are wholly insufficient to raise the issue in respect of *arbitrary legislative action* presented by Myles Salt Co. v. Iberia & S. M. Drainage Dist., 239 U. S. 478, 60 L. Ed. 392, 36 Sup. Ct. Rep. 204." (Italics ours.)

From the pronouncement of this Court in the cases above cited (and many others that could be cited) it follows that unless the record before it shows that it is alleged and clearly shown that a state legislature, in exercising its power to enact a statute, was palpably guilty of action that was arbitrary to the extent of flagrant abuse of that power, such record fails to disclose a case for the application of the Fourteenth Amendment by this Court. This clearly because this Court is concerned only with what the *legislature of a state* has done and not with what *state officials* do in construing or administering the statute.

As this Court said in *Mountain Timber Co. v. Washington, supra:*

> "All reasonable presumptions are in favor of its (statute) validity, and the burden of proof and argument is upon those who seek to overthrow it."

it is pertinent to measure appellant's showing by this ruler.

An examination of his 32-page transcript of record and of his 57-page brief discloses a total failure either to allege, to prove or to argue that the legislature of the State of California exercised its power to enact the statute assailed in a way that was either arbitrary or an abuse of such power. Indeed, there is not even a hint of such thing. The record before the Court in this case is wholly devoid of any mention of or reference to this vital element of a case within the prohibition of the Fourteenth Amendment.

SECOND.

This brings us to a consideration of ground SECOND above.

Appellant having signally failed to carry the burden imposed by the ruling in *Mountain Timber Co. v. Washington, supra,* struggles valiantly to justify his being in this Court on the ground that the Supreme Court of the State of California erred in its construction of the statute assailed.

This is a fair summary of the transcript of record and of appellant's brief, for in both is set out his assignment of errors, pages 16 and 17 of the former and pages 13 and 14 of the latter.

Those assignments are set out in three paragraphs and each of them begins with these words:

> "The Supreme Court of the State of California erred in holding that"

and in his conclusion, on page 57 of his brief, the appellant states that the ruling of the state Supreme Court should be reversed for the errors assigned.

All of the 42 pages of argument in appellant's brief are devoted exclusively to an attempt to prove that that ruling was erroneous. Nothing therein is said about arbitrary legislative action in the exercise of the power to enact the statute assailed.

It is clear, therefore, that appellant's quarrel is not with the *state legislature,* but with the *state Supreme Court.* It is not the action of the legislature, but the construction given to its act by the Supreme Court that is the basis of the appellant's attack on the statute assailed.

In this state of the record there is no case made for the application of the limitations of the Fourteenth Amendment.

In *Commercial Bank v. Buckingham,* 5 How. 317, 12 L. Ed. 169, in dealing with a similar case, this Court said:

> "If this Court were to assume jurisdiction of the case it is evident that the question submitted for our decision would not be whether the statutes of Ohio are repugnant to the Constitution of the United States, but whether the Supreme Court of Ohio has erred in the construction of them. It is the peculiar province and privilege of the state courts to construe their own statutes; and it is no part of the functions

of this Court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligations of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the states, and not for the correction of alleged errors committed by their judiciary."

In *Ross v. Oregon,* 227 U. S. 150, 162, 57 L. Ed. 458, 463, the quotation last above is incorporated in full in the opinion.

In *Baltimore Traction Co. v. Baltimore Belt R. Co.,* 151 U. S. 138, 38 L. Ed. 102, 14 Sup. Ct. Rep. 294, Section 167 of Article 23 of the Code of Public General Laws of Maryland was assailed as violative of the Fourteenth Amendment of the United States Constitution in that it deprived complainant of property without due process of law. On the subject this Court said:

"It was objected below that the section violated the Fourteenth Amendment of the Constitution of the United States, in that the owner of the land condemned thereunder might be deprived of his property without due process of law because the act did not provide for any notice to him of the proceedings; but it had been previously decided by the Court of Appeals of Maryland that the act, properly construed, required notice. *Baltimore Belt R. Co. v. Baltzell,* 75 Md. 103.

"We are bound to accept the conclusion of the state court as to the proper construction of the statute of the state. Green v. Neal, 31 U. S., 6 Pet. 291 (8:402); Davie v. Biggs, 97 U. S. 628 (24:1086); Louisville N. O. & T. R. Co. v. Mississippi, 133 U. S. 590 (33:785)."

Writ of error dismissed.

In the case at bar the Supreme Court of the state has previously decided that the Drainage District improvements were of benefit to all the property in the Los Angeles County Flood Control District.

From *Louisville etc. R. Co. v. Mississippi,* 133 U. S. 590, 33 L. Ed. 785, the syllabus is quoted as follows:

> "The Mississippi statute of March 2, 1888, as settled by the Supreme Court of that state, applies solely to commerce within the state; and this Court must accept as conclusive such construction of the state statute by its highest court."

In *Seattle etc. Ry. Co. v. State of Washington,* 231 U. S. 568, 58 L. Ed. 372, 34 Sup. Ct. Rep. 185, this Court said:

> "The possibility of a different construction and the grounds for the one adopted both are obvious, but this Court does not sit to revise the construction of documents (an ordinance) by state courts, even if alleged, as this ordinance is not alleged, to be contracts protected by the Constitution of the United States. Ficher v. New Orleans, 218 U. S. 438, 54 L. Ed. 1099, 31 Sup. Ct. Rep. 57. There is no impairment by later legislation, and it takes more than a possible misconstruction to make a case under the Fourteenth Amendment."

From the decisions of this Court above cited it is clear that the record in this case falls far short of presenting a case within the limitations of the Fourteenth Amendment to the Constitution of the United States.

It follows, then, that the motion to dismiss the appeal interposed by appellees must be granted.

## POINT II.

**Where the Legislature Prescribes the Boundaries of a Special Assessment District and Fixes the Basis Upon Which Assessments Are To Be Levied, Property Owners Are Not Deprived of Their Property Without Due Process of Law.**

The Los Angeles County Flood Control District boundaries were prescribed by the legislature (California Statutes 1915, p. 1502). The distinction between assessment districts created by the legislature and those created by subordinate legislative bodies frequently has been recognized by this Honorable Court and there can be no successful attack upon the proposition that in a district formed by the legislature property owners have been granted a hearing on the quetsion of the inclusion of their property within the boundaries of the district and upon the amount of the assessment to be levied against them. Thus it is said in *Houck v. Little River Drainage District*, 239 U. S. 254 (60 L. Ed. 266):

> "And with respect to districts thus formed, whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the Fourteenth Amendment unless it is palpably arbitrary and a plain abuse. These principles have been established by repeated decisions. *Hagar v. Reclamation Dist.*, 111 U. S. 701, 709, 28 L. Ed. 569, 572 * * *; *Spencer v. Merchant*, 125 U. S. 345, 353, 356, 31 L. Ed. 763, 766, 767 * * *; *Fallbrook Irrig. Dist. v. Bradley*, 164 U. S. 112, 167, 168, 41 L. Ed. 369, 391, 392 * * *; *Bauman v. Ross*, 167 U. S. 548, 590, 42 L. Ed. 270, 288 * * *; *Parsons v. District*

*of Columbia,* 170 U. S. 45, 52, 42 L. Ed. 943, 946 * * *; *Williams v. Eggleston,* 170 U. S. 304, 311, 42 L. Ed. 1047, 1049 * * *; *Norwood v. Baker,* 172 U. S. 269, 278, 43 L. Ed. 443, 447 * * *; *French v. Barber Asphalt Paving Co.,* 181 U. S. 324, 343, 45 L. Ed. 879, 889 * * *; *Wight v. Davidson,* 181 U. S. 371, 379, 45 L. Ed. 900, 904 * * * ; *Wagner v. Leser,* decided this day (239 U. S. 207, *ante,* 230 * * *)."

The authorities cited in the portion of the opinion just quoted might be extended, for our research has revealed that the opinion therein expressed has found repeated enunciation by this Honorable Court so that the line of authorities is unbroken and the rule too well settled to justify additional authorities.

Accepting this principle, let us examine the statute in question. Section 13½ of the Flood Control District Act is a legislative declaration that the governing board of the Flood Control District "may accept on behalf of said district a transfer and conveyance of all but not less than all" of four classes of drainage structures lying within the territorial limits of said district. That section further provides that when such transfer is made the district shall assume the unpaid portion of any obligations incurred to construct such structures by levying an assessment in the same manner as other assessments are levied by the district. This is a legislative declaration that the drainage structures therein enumerated will benefit the property within the Flood Control District, and the state Supreme Court has so held. It cannot be said that

the statute had to provide that the property owners of the district could be heard on the right of the governing body of the district to accept such drainage structures any more than it could be said that those property owners had a right to be heard on each structure which the governing board of the district contemplated erecting. Once the district was formed by the legislature, the property owners are presumed to be benefited by any works lawfully constructed under the authority of the act and those same property owners are presumed to be benefited by any structures which the governing body of the district is authorized to purchase in furtherance of the purposes for which the district was created. Section 16 of the Flood Control Act, as originally enacted in 1915, granted to the governing board of the district authority to

> "acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means * * * from * * * drainage districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes."

for which the district was created. This language is plain and explicit authority for the Los Angeles County Flood Control District to acquire the properties of the drainage districts described in paragraph 3 of the original petition filed in the California Supreme Court. It will be observed that there was no limitation in said section 16 as to the type of drainage district which could be so acquired, and therefore it must be assumed that any drainage district created under any law of the State of

California was within the provision just quoted. Section 13½, when it was added to the Flood Control District Act, described specific storm drain improvements, drainage improvements and drainage systems which could be acquired. Section 13½ and section 16 must be read together and, being read together, no property owner can successfully assert that by the acquisition of the properties enumerated in section 13½ he was deprived of his property without due process of law unless he contends that he was also deprived of his property without due process of law by the acquisition of any property enumerated in section 16 of the act.

Two kinds of hearings are guaranteed under the Fourteenth Amendment to the Federal Constitution to property owners in special assessment districts, *i. e.*, (1) a hearing on the inclusion of their lands within the district, and (2) a hearing on the apportionment of the burden to pay for such assessments. If the statute provides for a hearing on either of these questions, the constitutional amendment in question has not been contravened. Where the legislature has delineated the boundaries of a district, the courts have universally construed that to be a finding by the legislature that the lands embraced within the boundary delineated by the legislature will be benefited and no further hearing need be granted.

*Houck v. Little River Drainage District*, *supra*, and cases therein cited;

*Londoner v. City and County of Denver*, 210 U. S. 373.

## POINT III.

**Appellant Was Not Deprived of His Property Without Due Process of Law Because the Legislature Did Not Expressly Find That the Drainage Works Were Useful or Necessary to the Flood Control District.**

The sole grounds for the assertion that appellant was deprived of his property must depend upon the right of the appellant to be heard on what works would be useful or necessary to accomplish the purposes for which the Flood Control District was organized. The legislature, by the enactment of section 13½, was properly held by the California Supreme Court to have impliedly found that the drainage works described by that act were useful and necessary. Upon this question the property owner is presumed to have had a hearing before the legislature. The legislature, in fixing the boundaries and determining the apportionment of an assessment, may make a finding by implication as well as to expressly so recite. This rule was recognized by the California Supreme Court in the case of *Los Angeles County Flood Control District v. Hamilton,* 177 Cal. 119. It was therein said:

> "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms in the act itself. (*San Christina Investment Co. v. San Francisco*, 167 Cal. 762, 769.) The fixing of the district which is to

> bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions."

Appellant concedes that if the legislature had expressly recited that the works described in section 13½ were useful or necessary that he would have no grounds for seeking a review of the California Supreme Court decision by the Supreme Court. The fixing of the boundaries of an assessment district necessarily implies a finding that the lands within such district will be benefited. *Fallbrook Irrigation District v. Bradley, supra,* and cases therein cited. The gist of appellant's contention is: Any works for which his lands may be assessed to pay their proportionate share cannot be acquired until after he has had a hearing on their acquisition. Thus stated, appellant's contention reveals its own fallacy. In the creation of improvements districts the works or improvements to be constructed are necessarily described in general terms. Surely appellant would not contend that in the creation by the legislature of a district in which sewers were to be constructed he was entitled to a hearing on the type of sewers and the manner of their construction. If the legislature established a sewer district and authorized sewers to be constructed therein, the governing body of such an improvement district would necessarily have the administrative function of determining the type, character, extent and location of such sewers. No property owner within such a district could be heard to say that he was deprived of his property because he

was not permitted a hearing on these questions. In the instant case the Flood Control District Act authorized certain works to be constructed in general terms. Each time the Board of Supervisors of the Flood Control District sought to build a dam, for example, it was not incumbent upon that board to give the property owners of the district a hearing on such proposed construction. No more can it be successfully asserted that the appellant in this action was entitled to a hearing before the Board of Supervisors on the acquisition of the drainage structures described in section 13½. The two instances are parallel. The answer to the construction of the dam is the answer to the right to be heard on the acquisition of the drainage improvements.

Article 14 of the Amendments to the Federal Constitution has never been construed to guarantee a hearing on that question. The finding by the legislature, either express or implied, on such a question is binding upon the property owners.

*Fallbrook Irrigation District v. Bradley, supra;*

*People v. Sacramento Drainage District*, 155 Cal. 373;

*Brooks v. City of Oakland*, 160 Cal. 423;

*Miller & Lux v. Board of Supervisors*, 189 Cal. 254.

## POINT IV.

**Where a Statute Authorizes Additional Structures To Be Constructed in a Special Assessment District, it Is Not Unconstitutional to Omit Therefrom a Provision for an Additional Hearing on the Question of Benefits.**

The appellant's contention in the instant proceeding is similar to that which has been advanced in cases wherein statutes have been passed by state legislatures authorizing improvement districts of various kinds to do additional work and levy the cost thereof upon the lands within such districts. Some of these cases have been before the Supreme Court. Appellees believe that the decisions in those cases completely dispose of the appellant's contention that he was deprived of his property without due process of law.

In the early case of *Davidson v. City of New Orleans*, 96 U. S. 97, the contention was made that the Fourteenth Amendment to the Federal Constitution was contravened by a statute of Louisiana permitting an assessment to be levied against properties within an assessment district. Certain of the lands upon which the questioned assessment was levied had theretofore borne their proportionate share for the construction of certain drainage works constructed by private corporations. The argument was advanced that the statute permitting the assessment deprived the property owner of his property without due process of law inasmuch as it made his lands liable for double taxation. The Supreme Court pointed out that there was no federal constitutional prohibition against such double taxation, that the question was purely one for the state courts. This decision upheld an assessment

against lands for improvements which had theretofore been constructed. The similarity between the facts in that case and those in the instant appeal is striking. In the instant case the drainage improvements in question had been constructed prior to January 1, 1937, and the amendment to the Flood Control Act by the addition of section 13½ thereto permitted the governing body of the Flood Control District to levy and assess against the lands within such district the burden of paying the outstanding indebtedness on such improvements.

An even more striking parallel is found in the case of *Breiholz v. Pocahontas County,* 257 U. S. 118. In that action a system of drainage structures had been constructed and completed in 1909 and an assessment was levied against the lands within the district in proportion to benefits to pay for such system. Two years later, in 1911, the governing board of the district levied a further assessment on the lands within the district upon the same proportion as the original assessments to pay for the cost of repairing, deepening, widening, cleaning and reopening certain parts of the drainage system. The matter came before the Supreme Court upon the contention that the Fourteenth Amendment had been contravened because the property owner had been given no opportunity for a hearing on the levying of the second assessment. In passing upon this contention it was said:

> "The contention that a new notice and hearing were not required in this case by the due process provision of the Fourteenth Amendment is a sound one. We are dealing with the taxing power of the State of Iowa, exerted through the familiar agency of a regularly organized drainage district, which, it is admitted, properly included and, by the system of

drainage adopted, benefited the lands of plaintiff in error. It is admitted also that their lands were lawfully assessed to pay for the original drainage construction in the same proportion to benefits as that which was applied in this case to the cost of the improvements and repairs. * * *

"The provision of the section assailed, that the cost of repairs shall be assessed upon the lands of the district in the same proportion that the original cost was assessed, since it only requires a simple calculation to determine the amount of each assessment when the cost of the improvement is once determined, is a legislative declaration that the lands will be benefited, and that, in such a case, notice and hearing before such a legislative determination are not necessary, is settled by many decisions of this Court; (citing cases)."

Appellees assert that there is no difference between a statute authorizing additional work to be done on the structures theretofore constructed and on constructing additional structures. Since this is true there is likewise no difference between assessing for additional work on existing improvements and paying for newly-acquired improvements.

Further authorities in support of this contention are cited by the Supreme Court in the case of *Valley Farms Company v. Westchester,* 261 U. S. 155. In that action a sewer system had been constructed under a New York statute of 1905. That act was frequently amended, until in 1917 it was amended to designate the boundaries of an area benefited by the trunk and outlet sewers theretofore constructed and to provide for taxing of property within such boundaries. The original district had been

formed after a hearing and the contention was made that, because the amendment of 1917 provided for no hearing, the property owners who were not in the original district, but were included in the district defined by the legislature were deprived of their property without due process of law. In succinct and summary manner this contention was disposed of in the following language:

> "It was unnecessary for the legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribing the method of taxation. And it is unimportant that the sewer had been completed before the boundaries of the present district were established."

That statement is supported by the citation of *Phillip Wagner v. Leser,* 239 U. S. 207. In passing upon the validity of an assessment to pay for streets in the City of Baltimore which had previously been improved, the Supreme Court said in that case:

> "It is further urged, and much stress seems to be laid upon this point, that the complainant and others similarly situated were given no opportunity to be heard as to the amount of benefits conferred upon them, and the proper adjustment of taxes among property owners. But this question, * * * is foreclosed by the former decisions of this Court. This assessment, and the classification of the property to be improved, were fixed and designated by legislative act. It was declared that the property which had been improved by paving theretofore should, according to the width of the paving in front of the respective parties, be assessed at a certain sum per front foot. We think such a tax, when levied by the legislature, did not require notice and a hearing as to the amount and extent of benefits conferred

in order to render the legislative act due process of law within the meaning of the Federal Constitution."

If an assessment is upheld to pay for work already constructed on the grounds that the legislature fixed the boundaries of the district and determined the basis for the imposition of the burden, it must follow that an act of the legislature directing an assessment district to accept works constructed therein and to assume the obligation of paying any outstanding indebtedness thereon must also be upheld.

As has heretofore been said, property owners in an improvement district are not entitled to a hearing at each step of the proceeding, nor are they entitled to a hearing on every proposed assessment. Such is the holding of the Supreme Court in *Hagar v. Reclamation District,* 111 U. S. 701, and *Embree v. Kansas City L. & B. Road Dist.,* 240 U. S. 242, to mention only two of the leading cases on the subject.

The proposition that special assessments may be levied after the improvement has been made has been upheld also in the following authorities:

*Seattle v. Kelleher,* 195 U. S. 359;
*Spencer v. Merchant,* 125 U. S. 346;
*Baltimore v. Ulman,* 165 U. S. 719.

The legislative determination that property is benefited by improvements already constructed is conclusive on the courts unless there is a clear showing that the assessment is arbitrary or oppressive.

*Parsons v. District of Columbia,* 170 U. S. 52;
*Spencer v. Merchant, supra;*
*Louisville & N. R. Co. v. Barber Asphalt Paving Co.,* 197 U. S. 433.

## ANALYSIS OF APPELLANT'S ARGUMENT.

Appellant has specified three assignments of error. These specifications are discussed in Points I, II and III of appellant's argument. In the interest of clarity, appellees understand appellant's argument to be outlined as follows:

I. The California Supreme Court erred in upholding the validity of a statute which authorized the managing board of a special assessment district to accept property without granting a hearing to the property owners of such special assessment district.

A. The Los Angeles County Flood Control District is a special assessment district.

B. Special assessments cannot be validly levied without a determination of special benefit.

C. In special assessment districts the boundaries of which are not fixed by the legislature, property owners must be afforded an opportunity to be heard on the question of special benefits.

1. The governing board of the Los Angeles County Flood Control District is an administrative board.

2. The statute in question did not afford property owners an opportunity to be heard on the question of benefits.

D. The boundaries of the district to be assessed to pay for the cost of the properties transferred under the statute in question were fixed by a local administrative board.

II. The California Supreme Court erred in presuming that the legislature impliedly found the Flood Control District would benefit by the transfer authorized by the statute.

III. The California Supreme Court erred in holding that the statute in question refers to specific classes of structures which of necessity would benefit the district.

A. The formation of drainage districts within the larger Flood Control District were valid only if they were formed for a purpose different from that for which the Flood Control District was organized.

B. Only lands within a special assessment district are presumed to be benefited by the works of the district.

By thus reducing appellant's argument to outline form appellees believe they can shorten the reply argument. It will appear from the foregoing outline that Point I deals with the alleged error in upholding a statute which gave to an alleged administrative board discretionary powers on the acceptance of certain works and the assumption of the indebtedness incurred to pay for such works. Appellant attempts to prove this contention by asserting, first, that the Flood Control District is a special assessment district and, as such, may not levy assessments upon lands which are not specially benefited. Appellees agree with these two contentions. There is therefore no necessity to discuss the principles enunciated in the authorities cited under subheads (A) and (B) of appel-

lant's Point I (App. Br. pp. 16-22). Nor do the appellees seriously differ with the statement under subdivision (C) of Point I, although the applicability of the rule therein announced to the instant case is challenged by appellees. Appellant attempts to prove the principle enunciated by first citing authorities to the effect that the Board of Supervisors of the Flood Control District is an administrative board and does not exercise legislative power and second, by contending that the statute in question affords the property owners no opportunity to be heard on the question of benefits or the amount of the assessments. Appellees agree that the governing board of the Flood Control District has administrative functions, but it asserts that such board also has legislative functions. The board is the governing board of an agency of the state and, as such, exercises administrative, quasi-judicial and legislative functions, just as does the governing board of a county in California. Appellees find no occasion to question the authorities cited by appellant in support of his contention, but do not wish, by recognizing the fact that the Board of Supervisors is an administrative body, to be precluded from asserting that it is also a legislative body. Appellees therefore take up the remaining contentions of appellant, having indicated that certain of appellant's contentions need no denial or refutation by appellees.

## ANSWER TO APPELLANT'S ARGUMENT.

Appellees find appellant's argument on Point I now reduced to a consideration of the contention that the California Supreme Court erred in upholding a statute which did not provide for a hearing to property owners of the Los Angeles County Flood Control District on the question of benefits or the amount of assessments. Appellant has cited *Los Angeles Railway Corporation v. Los Angeles County Flood Control District*, 78 Cal. App. 173, in which it was held that the assessments levied under the Flood Control District Act were assessments and not taxes in spite of the fact that the statute directed them to be levied, assessed, equalized and collected in the same manner as taxes. The case of *City of Inglewood v. County of Los Angeles*, 207 Cal. 697, was cited in further support of the same point. This contention may be and is readily accepted by appellees. The point of difference between appellant and appellees becomes manifest when appellant relied upon the cases of *Brooks v. City of Oakland*, 160 Cal. 423, and *Londoner v. City and County of Denver*, 210 U. S. 373, in support of the assertion that the property owners of the Flood Control District were deprived of the right to be heard on the amount of assessment that was to be levied against their property in the transfer to the Flood Control District of the drainage improvements described in section 13½ of the statute in question. Appellees find nothing in the cases cited which supports the contention that the statute in question is invalid upon the grounds just named.

In the first named case the act there under consideration contained no provision whatever for any notice or hearing upon the question of the limits of the sewer district. No

property owner was given by that statute any opportunity to be heard upon the question whether the proposed sewer would benefit his property or the question whether his property should be included in the district to be taxed for construction. The only hearing vouchsafed to him was the hearing with respect to the regular annual valuation of his property by the city assessor before the board of equalization. Appellant has quoted from that portion of the decision wherein the California Supreme Court held that at a hearing before the board of equalization the property owner would have no opportunity to show that his property would not be benefited by the construction of the sewer system. Such a statute was correctly held to be in contravention of Article Fourteenth of the Amendments of the Federal Constitution. However, in that case it was expressly stated (p. 427):

> "It is thoroughly settled by the decisions of that Court (United States Supreme Court) that the legislature itself has the power to fix by statute the limits of a local taxing district, such as the sewer districts contemplated by this act, without a formal notice or hearing, and that, when it has done so, the courts will not inquire into the matter of a hearing before the legislature, nor into the legislative decision as to the property benefited and properly included in the district, but will regard that determination as final and conclusive. * * *"

Surely that language cannot be construed to mean that the act by which section 13½ was added to the Los Angeles County Flood Control District Act is invalid because it did not afford property owners within the district an opportunity to be heard. That case follows the well-established rule of this Honorable Court that the

determination by the legislature of the boundaries or the imposition of assessments is final and conclusive upon the courts. In the instant action it was the legislature that authorized the acceptance of the drainage improvements here in question and, under the authority just quoted from, the courts are bound by that legislation and the property owner cannot successfully urge that he has been deprived of his property without due process of law.

In the case of *Londoner v. City and County of Denver, supra,* also cited by appellant to support his contention that he has been deprived of his property without due process of law, the rule recognized by the California Supreme Court in *Brooks v. City of Oakland, supra,* is emphasized.

The error of appellant's contention appears from the following statement on page 29 of his brief, wherein it is said:

> "At no stage during the process of arriving at a determination of what property shall bear the burden of the obligations of the drainage districts and the amount of the assessment therefor are property owners within the Flood Control District given an opportunity to be heard on whether the drainage district works are of benefit to lands within the Flood Control District, or on the amount of the assessment to be levied."

The property owners who were to bear the burden of the transfer of the drainage works to the Flood Control District had their hearing before the legislature for the boundaries of the district were defined by the legislature in the passage of the original Flood Control District Act and the property to bear the burden was specifically mentioned in the passage of section 13½ as

an amendment to that act. The section last mentioned states:

> "* * * The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest of said drainage district bonds and for no other purpose."

That language distinguishes the statute here in question from the statutes considered in the cases cited by appellant under subdivision (C) of his Point I. The error of appellant's position to which we have just called attention is made the basis of appellant's argument under subdivision (D) of his Point I. Summarized, that argument is that the legislature merely authorized the governing body of the Flood Control District to accept the drainage works in question—did not command such works to be accepted. From that premise appellant draws the conclusion that the actual acceptance by the governing body of the district required a hearing on the necessity for such acquisition to prevent the property owners of the Flood Control District being deprived of their property without due process of law. Appellant, in support of his position, first cites *Swanson v. Therrell*, 112 Fla. 474. The portion of that opinion quoted by appellant

clearly indicates the distinction between the statute i question in that case and the one here under considera tion. There the legislature passed an act expressly de termining that certain lands were specially benefited an directed an assessment to be levied upon the lands withi an assessment district, but vitiated this declaration b inserting in the statute an express provision that i should not become effective until ratified by a majorit of the qualified electors. The court properly called at tention to this defect and correctly held that a statut imposing special assessments upon property cannot b made contingent upon the referendum of the electors o the district. Either the legislature makes the finding o benefits or it leaves that finding to be made by an inferio court. In the statute here under discussion the legis lature impliedly found that the drainage works describe in section 13½ would be beneficial to the district but lef it to the governing board of the district to determin when, if ever, such works should be acquired by th district. This is an entirely different situation than i the legislature had authorized (to use appellant's word the governing board of the district to find that the land within the district would be benefited by the acquisitio of the works described in the act. That would hav required a hearing by the inferior tribunal, to-wit, th governing body of the district, on the question of bene fits. The statute in question, however, was a legislativ finding of benefits.

Appellant next cites *Redman v. Kyle*, 76 Fla. 80 (8 So. 300). In that case it was held that a statute authoriz ing the levy of a tax up to fifty cents per acre on lands within an assessment district to pay the preliminary ex penses for the formation of the district was invalid. The

basis of the ruling was that the property owners within the district were not afforded an opportunity under the statute to be heard on the amount of the assessment to be levied against their property. The boundaries of the district in that case were fixed by the legislature but no basis was prescribed in the act for the fixing of the rate nor amount of the assessment except the maximum of fifty cents per acre. The Supreme Court of Florida attempted to distinguish the conclusion which it reached in that case with that reached by the United States Supreme Court in the case of *Houck v. Little River Drainage District*, 239 U. S. 254, by saying:

> "Counsel for appellees contend that, when the maximum amount of the tax or assessment is fixed by the Legislature, then no notice is required to be given of the imposition of such tax, and cites the case of Houck v. Little River Drainage Dist., 248 Mo. 373, 154 S. W. 739, as authority for this proposition. The cited case differs from the one now under consideration. In the former, the district was organized pursuant to a judgment of court, based upon proceedings as to which the owners of land in the district had notice. The Supreme Court of the United States in affirming this case distinctly says that, because of the provision for such notice, the question as to the constitutionality of the tax 'cannot properly be regarded as one of notice.' Houck v. Little River Drainage Dist., 239 U. S. 254, text 264, 36 Sup. Ct. 58, 61, 60 L. Ed. 266, text 274.
>
> "In the present case, the drainage district was created directly by the Legislature, and no notice was given to the owners of the land included within it of the proposed creation of the district, nor was any opportunity afforded them to object to any of

the proceedings, the amount of the tax to be a
sessed, or the rate to be levied, which rate may
placed at any amount not to exceed 50 cents p
acre, as may be determined by the board of supe
visors of the district."

The distinction between the Florida statute and t
statute of California here in question is this: The Ca
fornia statute authorized the assessments levied to pa
the obligations of the Flood Control District to be levi
on the *ad valorem* principle. Not only the assessmen
to pay for the drainage structures acquired under sectio
13½, but all of the obligations of the Flood Contr
District were to be levied on the taxable real propert
in the district on the basis of the assessed value of thos
lands. There was nothing in the Florida statute to guid
the commissioners in establishing a rate, nothing whic
the court could find would require the commissioners i
in fixing the rate to make a uniform rate, either upo
the basis of the location of the property, its value, o
the benefits to be derived by the preliminary expenses
We believe that the case of *Redman v. Kyle, supra, there*
*fore,* is not in point to sustain appellant's contention, an
that the decision in *Houck v. Little River Drainage Dis*
*trict, supra,* is applicable to the California statute i
question.

A further expression by this Honorable Court on the
constitutionality of an act authorizing the levy of an
assessment to pay the preliminary expenses of an assess
ment district which accords to the theory of the appellees
and disproves the theory of appellant is that of *West*
*Crawford Road Improvement District v. Missouri P. R.*
*Co.*, 266 U. S. 187, wherein it was held that a legislative
determination that a tax for the preliminary expenses of

an abandoned highway improvement, assessed on the basis of the assessed valuation of the property in the district for the purpose of state and county taxation, would not exceed the anticipated benefits from the construction of the improvement.

Appellant cites *Flynn v. Chiappari*, 191 Cal. 139, and *Miller & Lux v. Board of Supervisors*, 189 Cal. 254, as California authorities supporting his contention that section 13½ was invalid because it authorized the governing board of the Flood Control District to accept the drainage works without making it mandatory upon such governing board that the property owners be granted a hearing on the question of benefits.

In the first named case the Board of Supervisors of the City and County of San Francisco authorized the Board of Public Works of that city to institute certain street improvement proceedings and provided that such Board of Public Works could determine that the expenses for such improvement should be levied upon a district if the Board of Public Works determined that such improvements were of more than local or ordinary public benefit. If the board did not so determine, then the expense was to be met by assessments levied on the front foot basis. The ordinance did not require that a hearing be given to property owners by the Board of Public Works in determining which of the assessment methods would be used. The California Supreme Court held that such an ordinance was void because here was a delegation to an administrative board and due process of law required that in such an instance property owners should be granted an opportunity to be heard on the question of the inclusion of their property and the amount to be assessed thereon.

The same general principle was announced in *Miller & Lux v. Board of Supervisors, supra.* Here again these cases are distinguishable from the one before us in that the legislature did not in either of those cases fix the boundaries nor prescribe the method of levying the assessment.

In further support of appellant's contention that where special assessment proceedings are left to inferior legislative bodies property owners must be given a hearing, he cites *State v. McGuire,* 109 Minn. 88. We call particular attention to the portion of that opinion quoted by appellant on page 39 of his brief wherein it is said:

> "It is clear that the original proceeding could not be authorized by the legislature without some provision for notice or opportunity to be heard upon these questions."

That case again follows the rule heretofore announced that the legislature may fix the boundaries and determine the lands to be charged with assessments and when that body does so the property owners are precluded from asserting that they had no opportunity to be heard on these two questions; but when the legislature authorizes a subordinate legislative body to determine these two questions, then the property owner is entitled at some stage of the proceedings to a hearing. Appellees find nothing in the case last cited to support appellant's contention of invalidity directed against section 13½ of the Los Angeles County Flood Control District Act.

The last two cases cited by appellant, to-wit, *Stanley v. Jeffries,* 186 Mont. 114, and *Amos v. Mathews,* 99 Fla. 1, were cited to the California Supreme Court by the appellant herein in a petition for a rehearing in the instant action. These two decisions are in accord with the decision of the California Supreme Court in *Redwood City v. Myers,* 7 Cal. (2d) 283, one of the authorities relied upon by the California Supreme Court in the decision under attack in this proceeding.

In the case of *Stanley v. Jeffries, supra,* the court held that a statute authorizing a city to assume the payment of bonds and warrants of special improvement districts within such city was constitutional and valid where the statute authorized the electors of such city to authorize the assumption of these debts at an election caused for this purpose. The statute there under consideration was the direct converse of the statute under consideration in *Redwood City v. Myers, supra,* but the two opinions are consistent. In *Amos v. Mathews, supra,* the Florida Supreme Court adopted the identical theory of the California Supreme Court in *Redwood City v. Myers, supra,* in that the court held that the state gas tax funds should not be used to purchase the bonds of counties and road districts merely because the legislature purported to grant such authority. These cases are not convincive of the proposition asserted by appellant nor are they controlling on the question presented for consideration in the instant appeal.

We have considered appellant's argument under his Point I. In his second point he asserts that the Supreme Court of California erred by assuming that the legislature impliedly found that the drainage structures in question would be of benefit to the Los Angeles County Flood Control District. In developing his argument under this point the following cases are cited:

*Reclamation District v. Birks,* 159 Cal. 233;

*Barber v. Galloway,* 195 Cal. 1:

*Palo Verde Irrigation District v. Seeley,* 198 Cal. 477.

Those three authorities were amply considered, cited and distinguished by the California Supreme Court in the decision now under consideration. The California Supreme Court held that those three cases were not authority for the proposition asserted by appellant. We are content to rely upon the consideration of these cases in the decision here brought in question as succinctly refuting appellant's contention.

With reference to the case of *Reclamation District v. Birks, supra,* the decision of the California Supreme Court [Tr. of Record, p. 26], states:

> "Our conclusions herein are not opposed to the holding in the case of *Reclamation District v. Birks,* 159 Cal. 233, relied upon by the petitioners. The present case does not involve a 'sale' of improvements from one district to another as was contemplated by the action of the trustees of the Reclamation District in the cited case. It was held in the *Birks* case that one district may not acquire property of another and impose upon the property owners

payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands to be so burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of *Barber v. Galloway*, 195 Cal. 1. * * *

"Our conclusion herein that the statute involved is valid also finds support in *Palo Verde Irrigation District v. Seeley, supra.* In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act. (Stats. 1923, p. 1067.) That act provided for the organization of a Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. * * * It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect would obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable."

In the foregoing quotation we believe the California Supreme Court has effectively refuted appellant's contention that the cases therein cited point out the error of the California Supreme Court in finding that the legis-

lature impliedly determined that the property owners of the Flood Control District would be benefited by the acquisition of the drainage structures in question. Appellant's contention is based upon the fact that section 13½ merely designates the drainage structures by the statutory authority under which they were created. That is hardly a correct interpretation of the language of section 13½. It authorized the transfer of drainage structures constructed under certain acts therein named which were in existence on January 1, 1937. Here was a description of structures which were in existence, and it must be presumed that the legislature had before it testimony as to what such structures were. The fact that they were described by the statute under which they were created does not lessen the particularity of their description.

As a corollary to appellant's Point II he insists in his Point III that the California Supreme Court further erred in holding that the nature of the drainage structures described in section 13½ demonstrate their usefulness for flood control purposes without any express declaration to such effect. He attempts to prove this point by two assertions: (a), that the validity of drainage districts res upon the theory that they serve a different purpose than that served by the Flood Control District; and (b), that a special assessment district is presumed to include within the district all the lands to be benefited by such improvements. He cites in support of the first contention just mentioned *Van de Water v.*

*Pridham*, 33 Cal. App. 252, which was an action considering the validity of one of the drainage districts here transferred, Drainage District No. 1. Here again the opinion of the California Supreme Court, now being questioned, considered the contention that the drainage district and the Flood Control District were organized for inconsistent purposes. In refusing to accept such a contention the decision stated [Tr. of Record, p. 27]:

> "The statement in the case of *Van de Water v. Pridham*, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here in question, namely, the combination of the functions of drainage and flood control to the end that drainage waters may as well be conserved through the joint facilities of the drainage and flood control districts, is well within the legislative power."

There can be no question but what the California Supreme Court has correctly perceived the view taken by the legislature, to wit, that the drainage structures would be beneficial to the accomplishment of the purposes of flood control and water conservation for which the Flood Control District was organized.

Appellant cites *Moore v. Thornberg*, 208 Cal. 657, as authority for his contention that smaller improvement districts organized within a larger district are serving different purposes. That may be true, but it is not necessarily exclusive. The drainage works here in question may have served the purposes for which they were constructed, to wit, drainage, but at the same time by virtue of a change of conditions they may now be of service in accomplishing the larger purpose of flood control. The fact that at the time of the formation of the drainage districts the sole object to be accomplished was the drainage of the area comprising such districts, does not forever preclude the possibility that the works constructed within such districts might also serve a larger area as a part of an extended flood control improvement.

The second ground upon which appellant contends the California Supreme Court erred in assuming that the drainage works would serve the flood control purposes is that at the time of the formation of the drainage districts all of the lands to be benefited by the drainage structures thereof were presumed to be included within such drainage district. That likewise may be granted, but it is not conclusive proof that by the uniting of the drainage structures of several drainage districts to assist in the accomplishment of a countryside flood control program, lands lying outside of any of the drainage districts would be benefited. We find no quarrel with the contention that at the time of the formation of the drainage districts they were to include within their boun-

daries all of the lands to be benefited by the works proposed to be constructed. What we do disagree upon is the theory that other lands may not now be benefited by the acquisition of these drainage structures by the Flood Control District.

The case of *Moulton v. Parks*, 64 Cal. 166, is authority for the statement that the establishment of a special assessment district contains all of the lands which will be benefited by the improvements constructed therein. That case, however, gives no weight to the contention of appellant that lands lying outside of improvement districts may not thereafter be benefited by the use of structures constructed within the boundaries of such districts. For aught that appears in this record the drainage structures within each of the drainage districts may subsequently be made a part of one united drainage system. This would obviously increase the benefits to the lands lying within the drainage districts and also extend those benefits to lands not now lying within any of the drainage districts but lying within the larger boundaries of the Flood Control District.

## Conclusion.

Appellees insist there is no jurisdiction in the Supreme Court to review the construction of a statute by a state Supreme Court; this appeal seeks a review of the construction of a statute and not the validity thereof. The authorities cited by the appellant are not decisive nor germane to the issue presented by the petition before the Supreme Court. The appellant has not been deprived of

his property by the omission of the legislature in express terms to find that the drainage works in question would be useful or necessary for the accomplishment of the purposes for which the Los Angeles County Flood Control District was organized. The legislature impliedly so found and that was all that was necessary. For these reasons appellees assert that the judgment of the Supreme Court of California should be affirmed and that this petition should be dismissed, or that the judgment of the California Supreme Court must be affirmed on the merits since the statute in question did not deprive appellant of his property without due process of law.

Respectfully submitted,

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and
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and
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*Of Counsel.*

## STIPULATION.

It is hereby stipulated by and between counsel for the respective parties to the above entitled action, that appellees may include in their brief a map showing the boundaries of the Los Angeles County Flood Control District and the boundaries and area in acres of the drainage districts within such Flood Control District; and

It is further stipulated that appellees may file their brief at the time of oral argument.

Dated this 23rd day of January, 1939.

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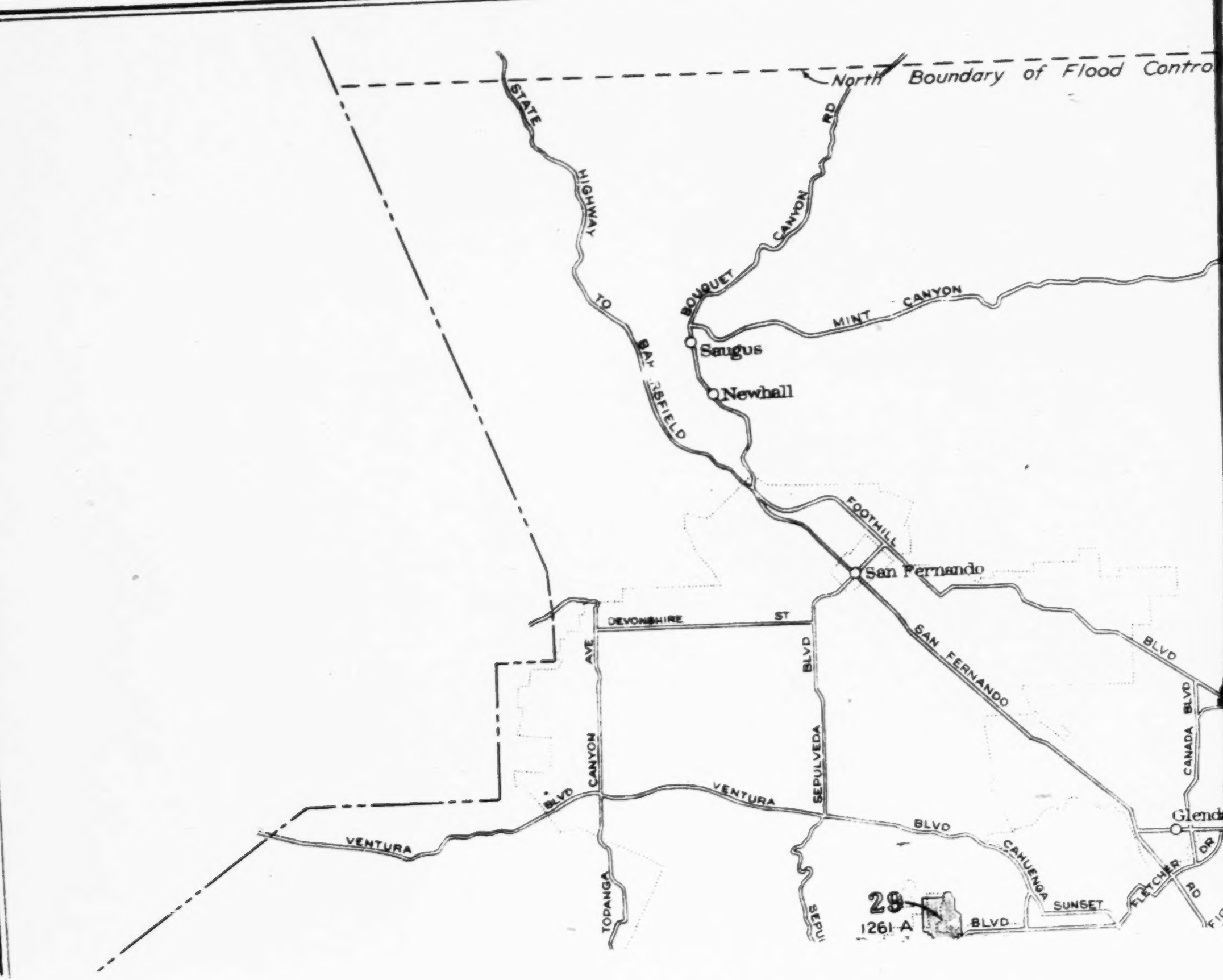
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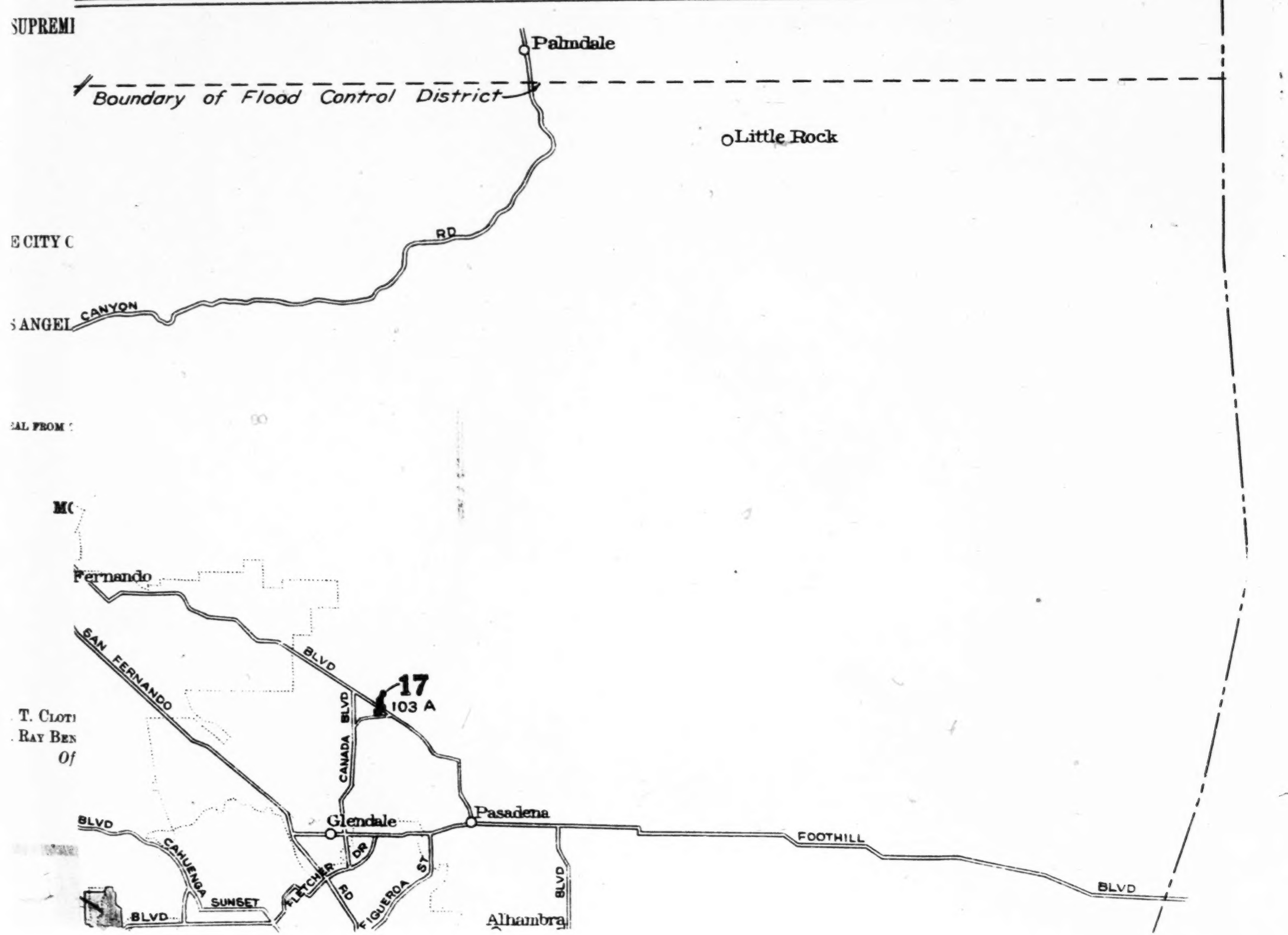
BUREAU OF ENGINEERING
MAPS AND RESEARCH DIVISION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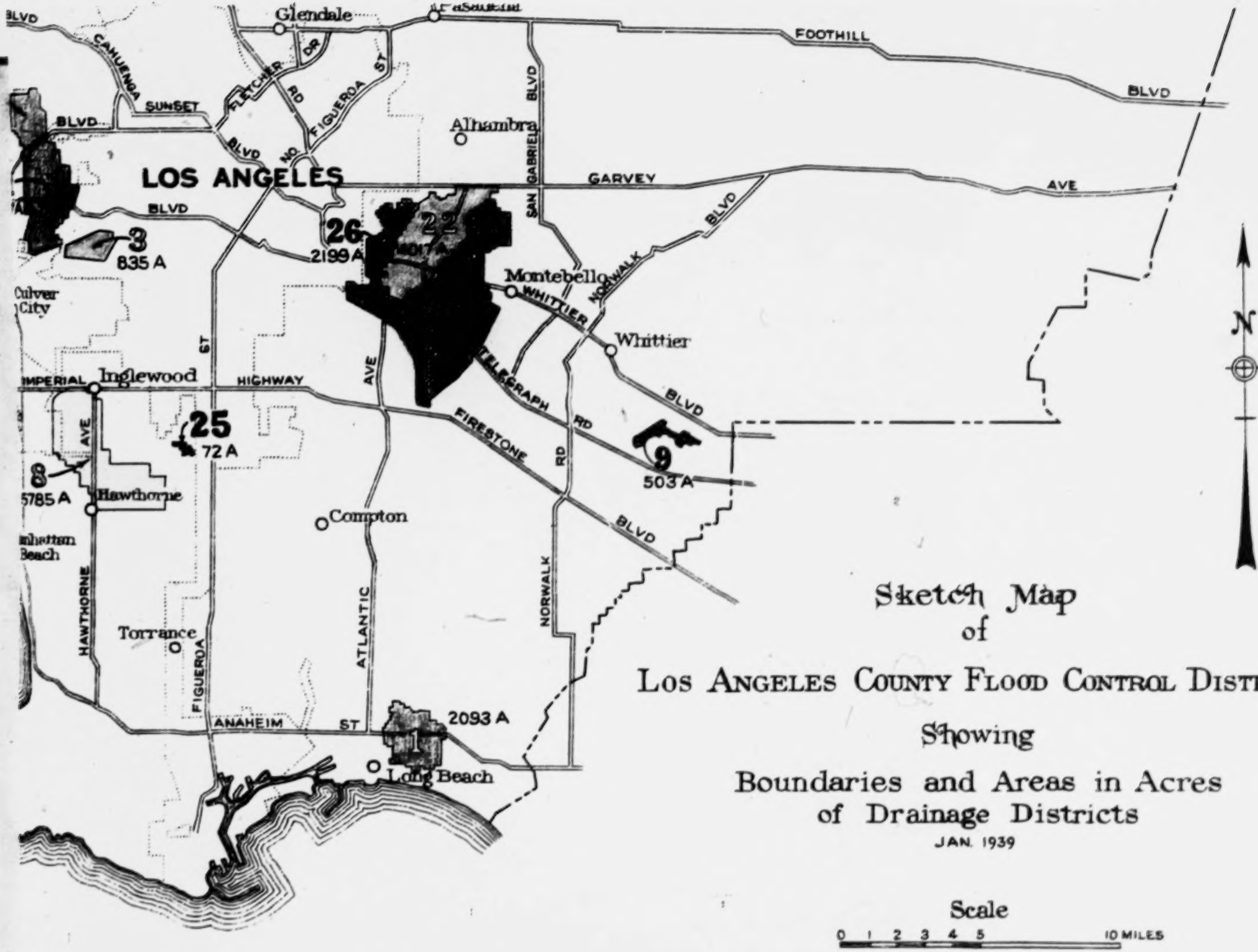
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Sketch Map
of
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
Showing
Boundaries and Areas in Acres
of Drainage Districts
JAN. 1939
Scale
0 1 2 3 4 5 10 MILES
Note: Limits of City of Los Angeles indicated by dotted line
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p. 4

# SUPREME COURT OF THE UNITED STATES.

No. 368.—October Term, 1939.

Ray L. Chesebro, Appellant,
*vs.*
Los Angeles County Flood Control District, et al.

Appeal from the Supreme Court of the State of California.

[March 27, 1939.]

Mr. Justice Butler delivered the opinion of the Court.

Appellant maintains that a California statute authorizing an administrative board to levy special assessments on his land within a flood control district created by the legislature to pay cost of local improvements and facilities and of their operation, maintenance, and betterment, without providing him an opportunity to be heard on the question of benefits, is repugnant to the due process clause of the Fourteenth Amendment.

Chapter 755, Statutes 1915, creates the Los Angeles flood control district. Section 2 declares that the purposes of the act are to provide for the control of the flood and storm waters of the district, to conserve them for beneficial uses, and to protect the property within the district from damage by flood or storm waters. Section 16 empowers the board of supervisors of the district to construct all improvements and to acquire all property that is necessary or useful for carrying out the purposes of the act.

Chapter 642, Statutes 1937, added § 13½ to the flood control act. It provides: The board of supervisors of the district may accept on its behalf, a transfer and conveyance of "all, but not less than all," storm drain improvements, drainage improvements or drainage systems of defined classes lying within the district. Upon conveyance to the district of any such drainage works it shall become liable for principal and interest of bonds thereafter maturing which were issued by any drainage district to pay the cost of constructing the transferred property. For that purpose the board shall levy a special tax each year upon the taxable real estate in the district.

A map, that with appellant's consent is included in appellees' brief, shows that the flood control district is within and nearly as large as Los Angeles county which contains almost 4,000 square miles and that within it there are eleven drainage districts, two of which were organized under Chapter 258, Statutes 1903, and amendatory acts, and nine of which were organized under Chapter 354, Statutes 1919, and amendatory acts.*

Appellant and the city of Los Angeles presented to the highest court of the State their petition for a peremptory writ of mandate. In substance it alleges: Petitioners own taxable real property within the flood control district and outside the drainage districts. December 1, 1937, the board of supervisors of the district accepted a transfer to the district of the improvements and systems of the eleven drainage districts. The board intends to levy annual special assessments against all real estate in that district sufficient to meet the outstanding obligations incurred on account of the works so transferred. The levy of these assessments will be illegal in that they will be levied against property situated in the flood control district to pay the debts and obligations of other special assessment districts without regard to the accrual of benefits to the lands assessed and will deprive petitioners of their property without due process of law in violation of the Fourteenth Amendment. The petition prays a peremptory writ of mandate to require appellees to levy assessments in accordance with Chapter 755, Statutes 1915, as it was prior to the addition of § 13½ and to command them to refrain from levying any assessment under that section.

Appellees demurred on the ground that the petition failed to state facts sufficient to constitute a cause of action. The state court sustained that contention and denied the writ. It ruled: A finding by the legislature that lands within the flood control district would be benefited by that district's acquisition of the works of the drainage districts is conclusive unless shown to be without reasonable foundation. It must be presumed that, by designating in § 13½ the improvements authorized to be transferred, the legislature found that the entire flood control district would be specially benefited by the acquisition. The particularity of the description implies such

*The two districts organized under the act of 1903 and amendatory acts are No. 1, containing 2093 acres, and No. 3, containing 835 acres. The numbers and areas of the nine organized under the act of 1919 and amendatory acts are as follows: 8,—5785 acres; 9,—503 acres; 11,—3067 acres; 17,—103 acres; 22,—4017 acres; 23,—8786 acres; 25,—72 acres; 26,—2199 acres; 29,—1261 acres.

a finding. The finding thus implied is as fully effective as if declared in express terms in the act itself.

Petitioners appealed to this court; appellees moved, as to the city, to dismiss or affirm on the ground that no federal question was involved; and, as to both appellants, on the grounds that no substantial federal question was presented, and that the decision below rests upon adequate non-federal grounds. We dismissed the city's appeal for want of a substantial federal question and postponed to the hearing on the merits further consideration of the question of jurisdiction and of the motion to dismiss or affirm. 305 U. S. —.

That motion is denied. The validity of the statute under the federal constitution was by the petition appropriately drawn in question and in substance the decision of the state supreme court is in favor of its validity. See *Bryant* v. *Zimmerman*, 278 U. S. 67-69. Its judgment does not depend upon characterization of the statute or mere interpretation of the language employed. Its decision is to the effect that the legislature found that the real property within the flood control district would be specially benefited by the acquisition of the district drainage works and that therefore the appellant and other owners are not entitled to be heard on the question of benefits. Appellant contends there is no foundation for the ruling that the legislature made that determination and that, as put in operation and effect by the State, § 13½ deprives him of his constitutional right to be heard. See *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 362. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 237. *Railroad Commission* v. *Eastern Texas R. R.*, 264 U. S. 79, 86. *Mason Co.* v. *Tax Comm'n*, 302 U. S. 186, 206-207. We are unable to say that the question is foreclosed by our decisions or that it is so clearly not debatable as to require dismissal for lack of substance. *Hamilton* v. *Regents*, 293 U. S. 245, 258. *Alton Railroad Co.* v. *Illinois Commerce Commission*, — U. S. —, decided January 16, 1939. Nor do we find any merit in the contention that the judgment rests upon an independent non-federal ground.

But we are opinion that the judgment is right and must be affirmed.

In the absence of flagrant abuse or purely arbitrary action, the State, consistently with the federal constitution, may establish local districts to include real property that it finds will be specially benefited by drainage, flood control, or other improvements therein, and, to acquire, construct, maintain and operate the same, may impose special tax burdens upon the lands benefited. *Hagar* v.

*Reclamation District*, 111 U. S. 701, 704-705. *Spencer* v. *Merchant*, 125 U. S. 345, 355. *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, 342. And see *Houck* v. *Little River District*, 239 U. S. 254, 262. And where, within the scope of its power, the legislature itself has found that the lands included in the district will be specially benefited by the improvements, prior appropriate and adequate inquiry is presumed, and the finding is conclusive. *Parsons* v. *District of Columbia*, 170 U. S. 45, 52. *Wagner* v. *Baltimore*, 239 U. S. 207, 218. *Withnell* v. *Ruecking Const. Co.*, 249 U. S. 63, 69. *Hancock* v. *City of Muskogee*, 250 U. S. 454, 458. *Branson* v. *Bush*, 251 U. S. 182, 189-190. *Valley Farms Company* v. *Westchester*, 261 U. S. 155, 162 *et seq.* *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 721. But where the district was not directly created by the legislature and there has been no determination by it that their property will be benefited by the local improvements the owners are entitled, under the due process clause of the Fourteenth Amendment, to be heard by some officer or tribunal empowered by the State to hear them and to consider and decide whether their lands will be specially benefited. *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 167. *Embree* v. *Kansas City Road Dist.*, 240 U. S. 242, 247. *Browning* v. *Hooper*, 269 U. S. 396, 405, 406.

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The legislature need not adopt any form of statement or finding for, in the enforcement of restraints imposed by the federal constitution upon the power of States to assess and collect taxes, this Court regards the substance of their enactments as controlling rather than mere forms of expression employed. *Londoner* v. *Denver*, 210 U. S. 373, 385. Appellant does not suggest that as a matter of fact his land is not by the drainage works specially benefited or that a finding that it is so benefited would be without foundation or arbitrary. Indeed, he concedes that, if the legislature either by designating the territory to comprise the district or by expressly so declaring has made the finding, he is bound by it.

As shown by the opinion below, the state court long before the addition of § 13½, held that the mere passage of the flood control act, which did not contain a direct statement to that effect, "must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The

findings thus implied are as fully effective as if declared in express terms in the act itself." *Los Angeles Flood Control District* v. *Hamilton*, 177 Cal. 119, 124-125. The court deemed that language applicable in disposing of appellant's contentions in this case. And we think that as the legislature had knowledge of that decision when enacting the challenged provision, it must be given great weight in determining the validity of § 13½.

The flood control district had long been in existence and empowered to acquire property necessary for its purposes. Section 13½ limited the board's authority to acceptance of "all, but not less than all" the drainage works and defined the tax burden to be imposed. The legislation is not to be distinguished from a measure to take effect upon an event unrelated to the creation of the district or the imposition of special assessments.

No question is raised as to the validity of the flood control district or its authority to levy special assessments on lands within it. By the enactment of the challenged section, the legislature unquestionably intended that the use of the drainage works should not be limited to the purposes for which originally they were intended but that they should also be used in connection with other facilities for the purposes of the flood control district. The challenged section was not enacted to create a new assessment district but specially to authorize the one already established to accept, maintain, and use the designated improvements for some of the purposes enumerated in the flood control act. The essential features of the challenged statute necessarily imply special benefits to the lands in question. We think the state court's ruling that impliedly the legislature made the requisite findings is not without adequate foundation. Mere lack of formal or express statement of them is not sufficient to require reversal.

*Judgment affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*